

JUL 28 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEE ANGELO GOTTY,

Defendant - Appellant.

No. 05-30068

D.C. No. CR-03-00402-AJB

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Josee Angelo Gotty appeals from the 170-month sentence imposed following his guilty-plea conviction for bank robbery, in violation of 18 U.S.C. § 2113(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gotty contends that retroactive application of the remedial portion of *United States v. Booker*, 543 U.S. 220 (2005), violated his due process rights and the ex post facto clause. Both contentions are foreclosed by *United States v. Dupas*, 419 F.3d 916, 920-21, 924 (9th Cir. 2005).

Gotty also contends the application of the career-offender provision of the Sentencing Guidelines violated his Sixth Amendment rights. However, this court has held that the Supreme Court's *Apprendi* line of Sixth Amendment jurisprudence does not preclude application of the career offender provision. *See United States v. Thomas*, 447 F.3d 1191, 1199-1200 (9th Cir. 2006).

Finally, Gotty contends that the district court failed to consider the sentencing factors enumerated in 18 U.S.C. § 3553(a). However, the court expressly considered Gotty's psychiatric and criminal history, his age, and the potential danger he posed to the community, and imposed a sentence within the middle of the advisory sentencing guidelines range. As the result of the court's consideration of various factors, the sentence imposed was reasonable. *See United States v. Plouffe*, 436 F.3d 1062, 1063 (9th Cir. 2006).

AFFIRMED.